

## Chapter Trans 311

## BREATH ALCOHOL TESTING, APPROVAL AND PERMIT PROGRAM

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**Note:** Chapter Trans 311 was repealed and recreated by emergency rule effective January 21, 1985. Chapter Trans 311 as it existed in July 31, 1985 was repealed and a new chapter Trans 311 was created effective August 1, 1985.

**Trans 311.01 Purpose.** The purpose of this chapter is to aid the department of transportation in the administration of the breath alcohol testing, approval and permit program as directed and authorized by s. 343.305 (6) (b), Stats.

**History:** Cr. Register, July, 1985, No. 355, eff. 8-1-85; correction made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1988, No. 388.

**Trans 311.02 Applicability.** The provisions of this chapter are applicable to all law enforcement agencies and personnel engaging in breath alcohol analyses in this state.

**History:** Cr. Register, July, 1985, No. 355, eff. 8-1-85.

**Trans 311.03 Definitions.** As used in this chapter:

(1) "Administrator" means the administrator of the division of state patrol in the Wisconsin department of transportation.

(2) "Agency" means a law enforcement agency in the state engaging in breath alcohol testing.

(3) "Alcohol" means ethyl alcohol and may include methyl alcohol and isopropyl alcohol.

(4) "Calibrating unit" means a device designed to produce a predictable alcohol concentration reading on a breath alcohol test instrument.

(5) "Certified instrument operator" means a person who has successfully completed a specialized training program and has been issued a permit by the department.

(6) "Chief of the chemical test section" means the person assigned the responsibility for the administration and supervision of the breath alcohol testing, approval and permit program of the department.

(7) "Department" means the Wisconsin department of transportation.

(8) "Instrument" means an item or combination of items of equipment designed to make a measurement of alcohol concentration.

(9) "Instrument blank analysis" means a test of an ambient air sample to insure that the instrument produces a zero result.

(10) "Lot" means an entire batch of reference solution.

(11) "Permit" means a certificate issued by the department authorizing an individual to perform breath alcohol testing using the instrument or categories of instruments specified thereon.

(12) "Qualitative breath alcohol analysis" means a test of a person's breath, the results of which indicate the presence or absence of alcohol.

(13) "Quantitative breath alcohol analysis" means a chemical test of a person's breath which yields a specific result in grams of alcohol per 210 liters of breath.

(14) "Reference solution" means a solution compounded for use in a calibrating unit which, when equilibrated with air, yields a predictable alcohol concentration or a sealed, pressurized sample of gas that contains a predictable alcohol concentration.

(15) "Secretary" means the secretary of the Wisconsin department of transportation.

(16) "Technician" means a person employed by the department, approved by the secretary and assigned the responsibility for the supervision of the breath alcohol testing, approval and permit program in an assigned area of the state.

(17) "Test sequence" means one adequate breath analysis, one reference solution analysis, and a second adequate breath sample analysis. Each subject test and each reference solution test shall be preceded and followed by an instrument blank analysis.

**History:** Cr. Register, July, 1985, No. 355, eff. 8-1-85; emerg. r. (4) and (5), renum. (6) to (9) and (11) to (17) to be (4), (6) to (8), (5) and (11) to (15) and am. (6), (5) and (9), cr. (16), eff. 1-1-88; r. (4), (5) and (11), renum. (6) to (10), (12) to (17) to be (4) to (7), (9) to (13), (8) and (14) and am. (4) and (8), cr. (15), Register, April, 1988, No. 388, eff. 5-1-88; renum. (6) to (15) to be (7) to (9), (11) to (17) and am. (9), (11), (14) and (17), cr. (6) and (10), Register, January, 1993, No. 445, eff. 2-1-93.

**Trans 311.04 Approval of breath alcohol test instruments.** (1) Only instruments and ancillary equipment approved by the chief of the chemical test section may be used for the qualitative or quantitative analysis of alcohol in the breath.

(2) (a) All models of breath testing instruments and ancillary equipment used shall be evaluated by the chief of the chemical test section.

(b) The procedure for evaluation shall be determined by the chief of the chemical test section.

(3) Each type or category of instrument shall be approved by the chief of the chemical test section prior to use in this state.

**Note:** A current list of quantitative or qualitative breath alcohol test instruments that have been approved for use in the State of Wisconsin is available from the Chemical Test Section, Wisconsin State Patrol, P. O. Box 7912, Madison, WI 53707.

**History:** Cr. Register, July, 1985, No. 355, eff. 8-1-85; am. Register, January, 1993, No. 445, eff. 2-1-93.

**Trans 311.05 Approval of calibrating units.** All calibrating units for breath alcohol test instruments shall have the approval of the chief of the chemical test section.

**Note:** A current list of calibrating units that have been approved for use in the State of Wisconsin is available from the Chemical Test Section, Wisconsin State Patrol, P. O. Box 7912, Madison, WI 53707.

**History:** Cr. Register, July, 1985, No. 355, eff. 8-1-85; am. Register, January, 1993, No. 445, eff. 2-1-93.

**Trans 311.06 Approved techniques and methods of performing chemical analysis of the breath.** (1) Only methods approved by the department may be used to perform quantitative breath alcohol analysis.

(2) Techniques used in performing quantitative breath alcohol analysis shall be those which are designed to assure accuracy, detect malfunctions and to safeguard personnel and equipment.

(3) Procedures for quantitative breath alcohol analysis shall include the following controls in conjunction with the testing of each subject:

(a) Observation by a law enforcement person or combination of law enforcement persons, of the test subject for a minimum of 20 minutes prior to the collection of a breath specimen, during which time the test subject did not ingest alcohol, regurgitate, vomit or smoke.

(b) Instrument blank analysis.

(c) An analysis utilizing a calibrating unit, the results of which analysis shall fall within 0.01 grams of alcohol per 210 liters of gas of the established reference value.

(d) Consecutive breath alcohol analysis results in a test sequence within .02 grams of alcohol per 210 liters of breath shall be deemed to be an acceptable agreement. Breath sample analysis failing to meet this criteria shall be deemed deficient.

(e) If the first test sequence is deficient, a second test sequence shall be administered.

(4) The results of an analysis of breath for alcohol shall be expressed in grams of alcohol per 210 liters of breath.

(5) Methods and techniques used in performing qualitative breath alcohol analysis shall be approved by the department.

**History:** Cr. Register, July, 1985, No. 355, eff. 8-1-85; emerg. r. and recr. (3) (b), cr. (3) (d) and (e), renum. (4) and (5) to be (5) and (4), eff. 1-1-88; r. and recr. (3) (b), cr. (3) (d) and (e), renum. (4) and (5) to be (5) and (4), Register, April, 1988, No. 388, eff. 5-1-88; am. Register, January, 1993, No. 445, eff. 2-1-93.

**Trans 311.07 Approval of breath alcohol testing programs.** (1) All breath alcohol testing programs in this state shall be certified by the department.

(2) Certification of any breath alcohol testing program shall be contingent upon the law enforcement agency's agreement to conform to and abide by all directives, orders or policies issued or to be issued by the department. These shall include, but are not limited to, the following:

(a) Program administration including reports, records and forms.

(b) Site location and security.

(c) Methods of operation and testing procedures.

(d) Transmission of all program data or information requested in a manner and format prescribed by the department.

**History:** Cr. Register, July, 1985, No. 355, eff. 8-1-85; am. (2) (intro.) and (d), Register, January, 1993, No. 445, eff. 2-1-93.

**Trans 311.08 Technicians.** (1) The secretary shall, upon recommendation of the department, approve trained technicians as required by s. 343.305 (6) (b) 3., Stats.

(2) The issuance of a certificate bearing the signature of the secretary shall establish that the holder of that certificate has been approved by the secretary as a trained technician.

(3) Duties and responsibilities of a technician shall include but are not limited to the following:

(a) Supervise the breath alcohol testing, approval and permit program in an assigned area of the state.

(b) Supervise the breath alcohol test activities of certified instrument operators.

(c) Complete field inspections of the total breath alcohol testing, approval and permit program including reports, records, operations and analyses.

(d) Conduct investigations into matters pertaining to the breath alcohol testing, approval and permit program.

(e) Instruct law enforcement agency personnel, utilizing the approved training programs, in the proper operation and use of breath alcohol test instruments and calibrating units.

(f) Evaluate and certify to the department the competency of law enforcement agency personnel to conduct qualitative and quantitative breath alcohol tests.

(g) Assure the continued proficiency and competency of certified instrument operators at intervals established by the department.

(h) Assure compliance with all provisions of this chapter.

(i) Maintain and submit records and reports as required by the department.

(j) Testify in court when required regarding the breath alcohol testing, approval and permit program.

(k) Comply with the procedure for testing and certifying the accuracy of breath alcohol test instruments set forth in this chapter.

(L) Comply with all directives concerning the breath alcohol testing, approval and permit program issued by the department.

**History:** Cr. Register, July, 1985, No. 355, eff. 8-1-85; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1988, No. 388.

#### **Trans 311.09 Approved training programs.**

(1) Training programs for the training of law enforcement agency personnel in qualitative or quantitative breath alcohol analysis shall be approved by and under the direction of the department.

(2) Applicants to attend an approved training program in quantitative breath alcohol analysis shall meet the following qualifications:

(a) Applicants shall be high school graduates or the equivalent.

(b) Applicants shall be full time, permanent employees of a law enforcement agency unless granted exception from this requirement by the department.

(c) Applicants shall have the recommendation of the chief administrative officer of the employing agency.

(3) Applicants to attend an approved training program in qualitative breath alcohol analysis shall have the recommendation of the chief administrative officer of the employing agency.

**History:** Cr. Register, July, 1985, No. 355, eff. 8-1-85; am. (1), (2) (intro.) and (3), Register, January, 1993, No. 445, eff. 2-1-93.

**Trans 311.10 Procedure for testing and certifying the accuracy of breath alcohol test instruments.** (1) All quantitative breath alcohol test instruments approved for use in this state shall be tested and certified for accuracy in accordance with the following standards:

(a) Each instrument shall be tested and certified for accuracy before regular use and periodically thereafter pursuant to s. 343.305 (6) (b) 3., Stats.

(b) Each test for accuracy shall include, but not be limited to, an instrument blank analysis and an analysis utilizing a calibrating unit. The result of the calibrating unit analysis shall fall within 0.01 grams of alcohol per 210 liters of the established reference value.

(c) The original reports of instrument maintenance and certifications shall be forwarded to and retained by the department.

(2) Each qualitative breath alcohol test instrument approved for use in this state shall be checked for accuracy as follows:

(a) The instrument shall be checked by an individual holding a valid permit for the operation thereof.

(b) The checks shall be conducted at intervals established by the department.

(c) Each check shall consist of an analysis utilizing a calibrating unit, the results of which shall fall within tolerances established by the department.

(3) Reference solutions for use in calibrating units shall have the approval of the chief of the chemical test section.

(a) Each reference solution shall be identified with a lot number.

(b) An assay report for each lot of reference solution shall be retained by the department specifying the amount of alcohol per milliliter of solution and the predicted result when used in a calibrating unit with a breath alcohol test instrument.

**History:** Cr. Register, July, 1985, No. 355, eff. 8-1-85; emerg. am. (1) (b), r. (3), renum. (4) to be (3), eff. 1-1-88; am. (1) (b), r. (3), renum. (4) to be (3), Register, April, 1988, No. 388, eff. 5-1-88; am. (1) (b), (2) and (3) (intro.), cr. (1) (c), Register, January, 1993, No. 445, eff. 2-1-93; correction in (1) (a) made under s. 13.92 (4) (b) 7., Stats., Register March 2012 No. 675.

#### **Trans 311.11 Qualifications for issuance and cause for suspension and cancellation of permits.**

(1) Permits to conduct qualitative or quantitative breath alcohol analysis for the purpose of determining the presence or concentration of alcohol in the breath shall be issued only to those persons who have

successfully completed a course of instruction prescribed by the department. Permits shall:

(a) Identify the instrument or categories of instruments that the bearer is qualified to operate.

(b) Bear the signature, original or facsimile, of the chief of the chemical test section.

(c) Be valid for a period of 2 years; except that a permit may be extended for cause by the department.

(2) The holder of a valid permit may at any time be required by a technician or the department to demonstrate his or her ability to satisfactorily operate a qualitative or quantitative breath alcohol instrument. Failure to demonstrate satisfactory ability will result in the suspension of the permit.

(3) A permit may be renewed or reinstated only upon successful completion of the procedure prescribed by the department.

(a) Permittees who are unsuccessful in the completion of any procedure required for the renewal of their permits shall have their permits suspended as of the date on which the failure took place and shall be given one opportunity, at the convenience of the de-

partment, to repeat the required procedure.

(b) Permittees who are unsuccessful in a second attempt to renew their permits shall not be issued a permit until they comply with the requirements for the issuance of an original permit as specified in sub. (1).

(4) A permit which has been expired beyond 2 years may not be renewed until the holder of that permit again complies with the requirements of sub. (1).

(5) The department or a technician may at any time suspend or cancel a permit for failure of the holder to comply with the requirements of this chapter and shall suspend or cancel any permit when suspension or cancellation is made mandatory by this chapter.

(6) Permits held by persons who are no longer employed by a law enforcement agency shall be cancelled. If the holder of the permit is subsequently employed by another law enforcement agency, the permit may be reinstated upon the request of the chief administrative officer of the employing agency.

**History:** Cr. Register, July, 1985, No. 355, eff. 8-1-85; emerg. am. (1) (b), eff. 1-1-88; am. (1) (b), Register, April, 1988, No. 388, eff. 5-1-88; am. (1) (intro.), (a) to (c), (2), (5) and (6), r. (7), Register, January, 1993, No. 445, eff. 2-1-93.